

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

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SCOTT W. SCHIFF  
c/o Schiff & Associates Co., LPA  
115 W. Main Street, Suite 100  
Columbus, Ohio 43215

and

SCHIFF & ASSOCIATES CO., LPA  
115 W. Main Street, Suite 100  
Columbus, Ohio 43215

and

KEVIN F. KURGIS  
c/o Kevin F. Kurgis Co., LPA  
100 South Fourth Street, Suite 300  
Columbus, Ohio 43215

and

KEVIN F. KURGIS CO., LPA  
100 South Fourth Street, Suite 300  
Columbus, Ohio 43215

Plaintiffs,

v.

EXCLUSIVE LEGAL MARKETING, INC.  
5601 Granite Parkway, Suite 890  
Plano, Texas 75024

and

COETY BRYANT  
5601 Granite Parkway, Suite 890  
Plano, Texas 75024

Defendants.

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Case No: 2:17-cv-237

Judge: Watson

**STIPULATED FINAL CONSENT JUDGMENT AND PERMANENT**

## INJUNCTION

Plaintiffs and Defendants submit to the Court and consent to the entry of the following Stipulated Final Consent Judgment and Permanent Injunction:

1. Plaintiff Scott W. Schiff (“Schiff”) is a well-known Ohio attorney practicing throughout the State of Ohio for more than 30 years, who represents individuals in personal injury cases. Schiff’s law firm is called Schiff & Associates Co. LPA (“Schiff & Assoc.”). Plaintiff Kevin F. Kurgis (“Kurgis”) is a well-known Ohio attorney practicing throughout the State of Ohio for more than 25 years, who represents individuals in personal injury cases. Kurgis’ law firm is called Kevin F. Kurgis Co., L.P.A., d/b/a the Law Office of Kevin Kurgis (“Kurgis Law Offices”). Schiff, Schiff & Assoc., Kurgis and Kurgis Law Offices shall collectively be referred to as Plaintiffs. On March 23, 2017, Plaintiffs filed an action for trademark infringement under the Lanham Act, 15 U.S.C. §1114 and Ohio common law, unfair competition, passing off, and false designation of origin under the Lanham Act, 15 U.S.C. § 1125(a) and Ohio common law, violation of Plaintiffs’ rights of publicity under O.R.C. § 2741, *et seq.*, and deceptive trade practices under O.R.C. § 4165.02 and Ohio common law, arising from Defendants’ unauthorized use of Plaintiffs’ names as key words and AdWords to direct potential personal injury clients to the ELM website, where they are then referred to competitors of Plaintiffs who have paid ELM for such referrals.
2. Defendant Exclusive Legal Marketing, Inc. (“ELM”) is a Texas Corporation, with its principal place of business at 5601 Granite Parkway, Suite 890, Plano Texas 75024. ELM is a marketing agency for attorneys, which specializes in

search engine optimization (SEO) and operating a call center to obtain telephone calls from injured persons looking for personal injury lawyers online and then sending those injured persons to law firms who have paid Defendants money for leads on personal injury cases. Such leads for personal injury cases were obtained by Defendants from buying the Plaintiffs trademarks and persona as Google AdWords and sending accident victims seeking the services of Plaintiffs, instead to ELM's Ohio Law firm Clients. ELM has entered into contracts with and received money for providing these services to at least three (3) law firms in the State of Ohio, specifically Rubin Guttman & Associates, LPA, Cleveland ; The Attkisson Law Firm LLC, Dayton; and Yuspeh Rappaport Law LLC (d/b/a Alliant Law LLP), Cleveland (the "Ohio Law Firm Clients"). Defendant COETY BRYANT also known as "Cody Bryant" (collectively "Bryant") is an individual with an address of 2134 Sleepy Hollow Trail, Frisco, Texas 75033. Bryant as the owner of Defendant ELM, has the right and ability to supervise the infringing activity of ELM, and Bryant has exercised control over all the activities of ELM. ELM and Bryant shall collectively be referred to as "Defendants".

3. This Court has jurisdiction over this matter under 15 U.S.C. § 1125, 28 U.S.C. §1338 and 15 U.S.C. § 1114. Venue is proper in this Court under 28 U.S.C. § 1391 (b), as Plaintiffs' cause of action arose and Plaintiffs are being injured in this judicial district, and because Defendants have purposefully availed themselves of the privilege of doing business in this forum.
4. In addition to common law rights in the name "Scott Schiff" and "Schiff & Associates", Schiff & Assoc. is the owner of U.S. Trademark Reg. No. 4,873,857 – SCHIFF & ASSOCIATES – registered December 22, 2015 for "legal services" (the

“Schiff Registration”) (collectively, the “Schiff Trademarks”). As an Ohio resident, Mr. Schiff also has exclusive rights to the commercial use of his name, voice, signature, photograph, image, likeness, or distinctive appearance pursuant to O. R. C. §2741, *et seq.* (the “Schiff Persona”). In addition to its common law rights in the names “Kevin Kurgis” and “The Law Office of Kevin Kurgis”, Kurgis Law Offices is the owner of U.S. Trademark Reg. No. 3,448,853 – KEVIN KURGIS --- registered June 17, 2008 for “legal services” (the “Kurgis Registration”) (collectively, the “Kurgis Trademarks”). As an Ohio resident, Kurgis also has exclusive rights to the commercial use of his name, voice, signature, photograph, image, likeness, or distinctive appearance pursuant to O. R. C. §2741, *et seq.* (the “Kurgis Persona”).

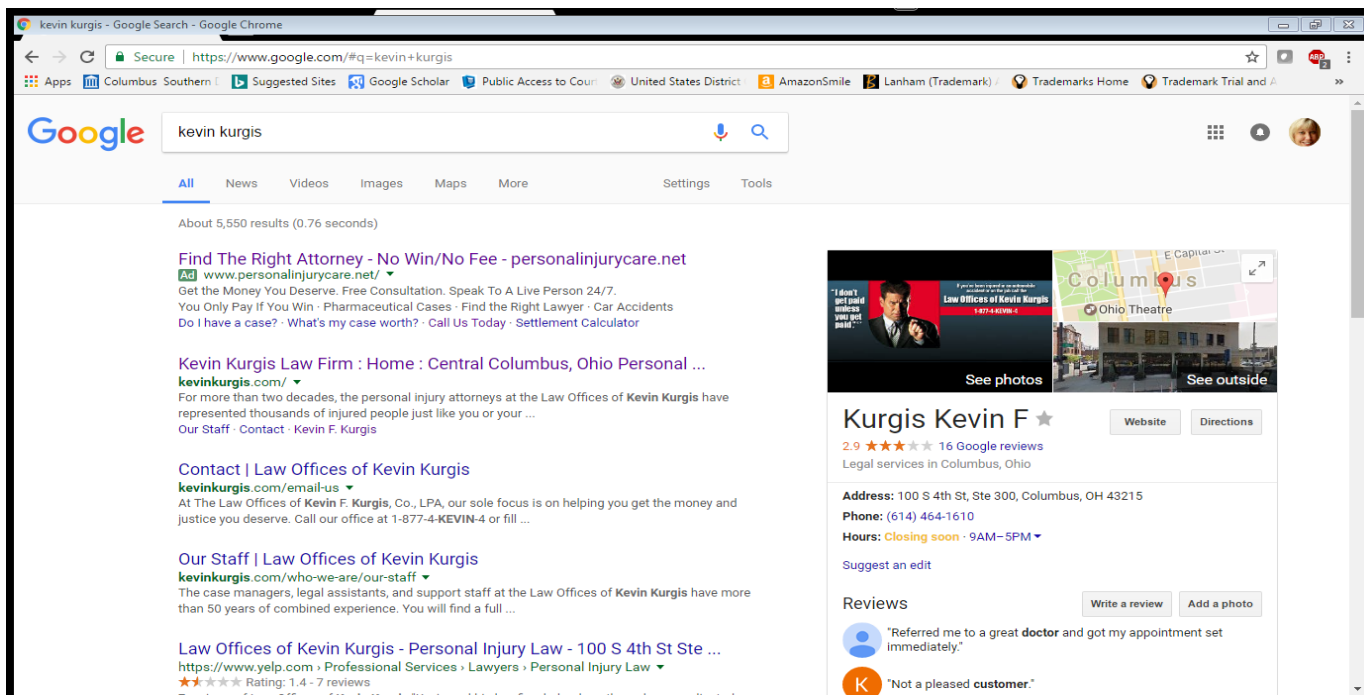
5. The certificates of registration of the Schiff Trademarks and Kurgis Trademarks are prima facie evidence of the validity of the registered trademarks, Plaintiffs’ ownership of the registered trademarks, and Plaintiffs’ exclusive right to use the registered trademarks in connection with the goods and services specified in the certificates of registration enumerated above. The registered marks identified above provide conclusive evidence of their validity under 15 U.S.C. § 1115(b), and constructive notice of the registrant's claim of ownership under 15 U.S.C. § 1072.
6. The Schiff Trademarks and Kurgis Trademarks are strong and their respective reputation and goodwill have continuously grown and are now well known throughout the City of Columbus and the State of Ohio.
7. As a result of Plaintiffs’ fame and their extensive use, advertising, and performance of legal services bearing the Schiff Trademarks and Kurgis Trademarks, the Schiff Trademarks and Kurgis Trademarks have acquired strong secondary meaning, have

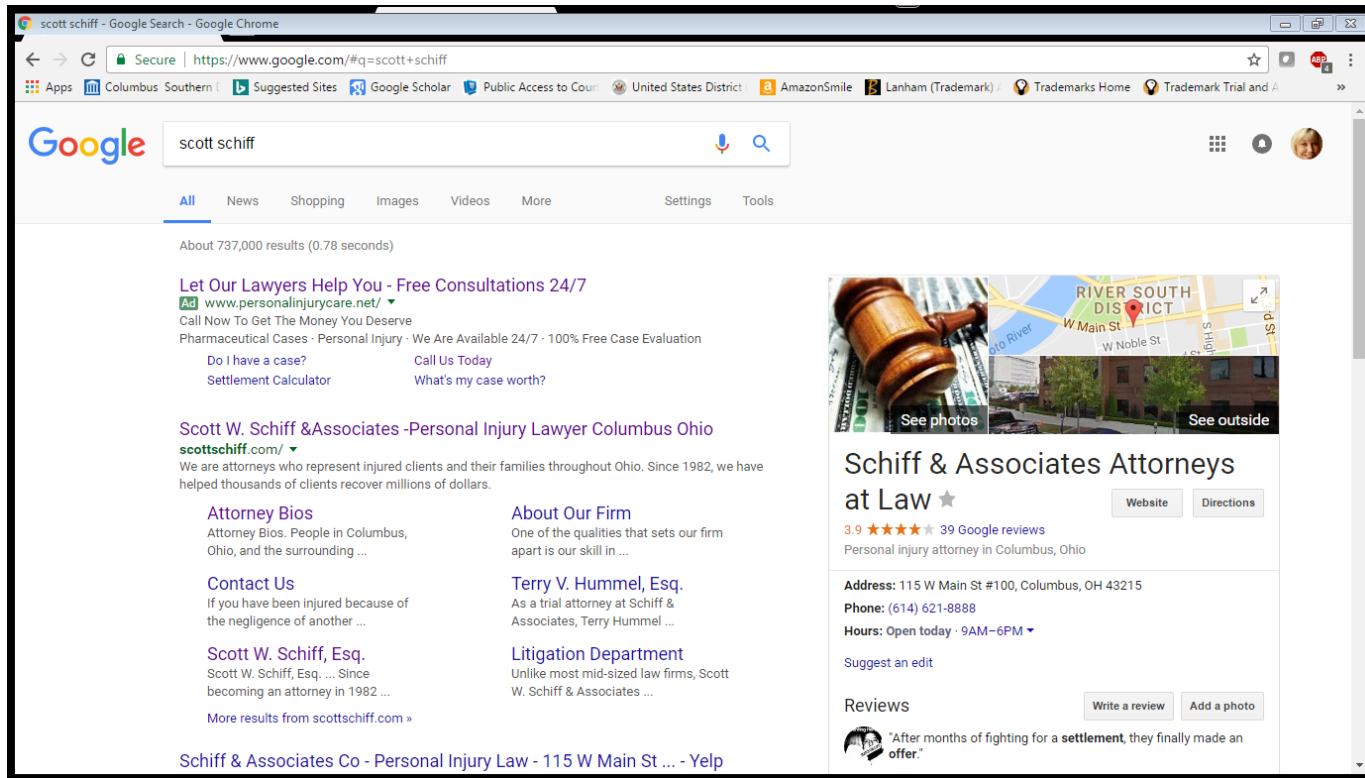
achieved favorable recognition throughout the State of Ohio, and have become assets of significant value as symbols pointing only to Plaintiffs' services and goodwill.

8. The Schiff Persona and Kurgis Persona have become solely associated with the respective Plaintiffs in the minds of Ohio consumers.

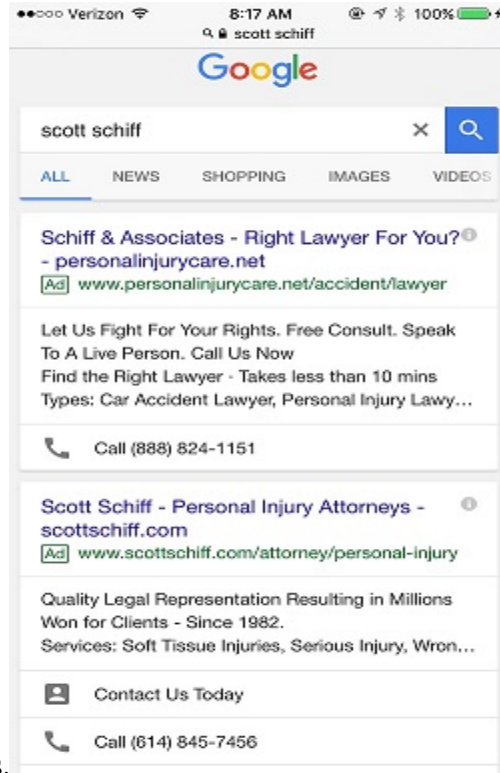
9. Defendant Bryant is also the beneficial owner and operator of the website

[www.personalinjurycare.net](http://www.personalinjurycare.net), which promotes Defendants' Ohio Law Firm Clients via pay-per-click advertising. However, rather than insure that Defendants' Ohio Law Firm Clients achieve prominent Google search result placement based upon their firm's own reputations or ELM's marketing expertise in getting its pay-per-click site to appear when a consumer types in a general search such as "personal injury lawyer Columbus Ohio", Defendants have purchased, among others as set forth herein, the trademarks "Kevin Kurgis" and "Scott Schiff" as KeyWords and AdWords so that a Google search on Plaintiffs' names brings up ELM's [www.personalinjurycare.net](http://www.personalinjurycare.net) website in the all-important top position:





Defendants has even used the Schiff & Associates trademark as part of the heading for



its sponsored ads.

10. Neither Defendants nor their Ohio Law Firm Clients have been licensed or authorized by Plaintiffs to use their trademarks or persona for any commercial purpose, including as a KeyWord or AdWord.
11. ELM uses pay-per-click advertising with Google to promote its Ohio Law Firm Clients, and operates a website at [www.personalinjurycare.net](http://www.personalinjurycare.net) (the “ELM Referral Site”) that directs consumers seeking a personal injury lawyer to one of the Ohio Law Firm Clients. ELM has purchased the names of various well known personal injury lawyers and law firms from Google as AdWords and KeyWords, including but not limited to: “Attorney Kevin Kurgis”, “Kevin Kurgis Office”, “Kevin Kurgis Law Firm”, “Kevin Kurgis”, “law office of Kevin Kurgis”, “Kevin Kurgis Attorney”, “Kevin + Kurgis”, “lawyer + Kevin + Kurgis”, “Kevin Kurgis”, “lawyer Kevin Kurgis Office”, “Scott Schiff”, “Schiff and associates”, “Schiff & Associates”. When a person seeking a personal injury lawyers types any of the AdWords or KeyWords that ELM has

purchased from Google, the first “hit” or listing of a lawyer below the search bar is for the ELM Referral Site. When an injured person clicks on that link in the ELM Referral Site, they are taken to the ELM Referral Site or given the option to immediately call an 800 number, which is operated by ELM. ELM’s telephone intake personnel do not tell the injured person that they have not reached the law firm whose name they searched in Google. And if the person asks the ELM call center if they have contacted the firm that they searched on Google, ELM has trained its operators to not answer that question but to try as get as much information as they can about their accident and then immediately put them in contact with a law firm that has contracted with ELM for leads. If an injured person asks if they are speaking with Plaintiffs, ELM employees tell the injured person that ELM “thinks” their recommended firm will do a better job for them than the firm they searched for by name. ELM is able to send an email or text engagement letter to the person on the telephone in order to sign them up for the law firms with contracts with ELM. Injured persons seeking Plaintiffs’ services have been confused when they searched for Plaintiffs, clicked on the first link below the search bar and were taken to the Ohio Law Firm Clients who did not disclose that they were not Plaintiffs (Ex. A attached ). ELM admits and provided evidence that it entered into contracts to provide “leads” for personal injury cases with the three (3) Ohio Law Firm Clients” (copies attached as Exhibits B-D).

12. Defendants admit that they intended for the personal injury clients who contacted Defendants seeking the services of law firms being searched to think they were contacting the law firm searched, but instead were sent by Defendants to client law firms of ELM.
13. Defendants’ use of the Schiff Trademarks and Kurgis Trademarks to promote legal services is likely to cause consumers to be confused and believe that Defendants and/or



the Ohio Law Firm Clients are sponsored, endorsed or affiliated with Plaintiffs, which is false.

14. Defendants' use of the Schiff Trademarks and Kurgis Trademarks constitutes trademark infringement under 15 U.S.C. § 1114.
15. Defendants' use of the rights of publicity and persona of Scott Schiff and Kevin Kurgis, is a violation of the rights of publicity and persona of Scott Schiff and Kevin Kurgis under O.R.C. § 2741.04

### **PERMANENT INJUNCTION**

This cause having come on for hearing and by and with the consent of the parties and the Court having been fully advised in the premises, it is hereby ORDERED, ADJUDGED and DECREED that:

(1) that Defendants, their officers, agents, servants, employees, shareholders and attorneys, their Ohio Law Firm Clients and any other persons in active concert or participation with Defendants who have obtained referrals for legal representation of personal injury victims as a result of ELM's marketing services using Google AdWords of non ELM client law firms or who have otherwise benefitted from Defendants' infringing activities, who receive actual notice of the court's order, be permanently enjoined from:

(a) Using the names "Schiff" or "Kurgis" or any word, name, symbol or device similar to the names "Schiff" and "Kurgis" in connection with any type of advertising, promotion, display, sale or marketing program for lawyers or legal services;

(b) Purchasing AdWords, KeyWords or any other product or service that uses the names "Schiff" or "Kurgis" or any word, name, symbol or device similar to the names "Schiff" and "Kurgis";

(c) doing any act or thing likely to induce the belief that Defendants'

businesses, services or products and any customers or clients of Defendants are in any way connected with, sponsored, affiliated, licensed, or endorsed by Plaintiffs;

(d) entering into any agreement that involves selling or using the Schiff Trademarks and Persona and/or the Kurgis Trademarks and Persona as AdWords, Key Words, or in any other way to promote any website(s) or internet traffic to any law firms in any fashion on the internet;

(e) aiding, abetting, contributing to or using any third party or machine to infringe upon the Schiff Trademarks and Persona and/or the Kurgis Trademarks and Persona;

(f) engaging in any type of search engine optimization or deoptimization that uses the names "Schiff" or "Kurgis" or any word, name, symbol or device similar to the names "Schiff" and "Kurgis";

(g) effecting any assignments or transfers, forming new entities, corporations, partnerships or associations or using any other device or person for the purpose of circumventing or otherwise avoiding the obligations set forth herein.

(2) that Defendants, in accordance with 15 U.S.C. § 1116(a), be directed to file with this Court and serve upon Plaintiffs within thirty (30) days after service of the permanent injunction a report in writing, under oath, setting forth in detail the manner and form in which Defendants has complied with the permanent injunction.

IT IS FURTHER ORDERED:

1. That this Court has jurisdiction over the parties and subject matter of this action.
2. That jurisdiction over this cause is retained by this Court for the sole purpose of enforcement of compliance with this Permanent Injunction and for further orders and directions as may be necessary or appropriate from the construction and effectuation of this Final Consent Judgment and Permanent Injunction.
3. That except for the relief herein granted, the above identified civil action, including all claims, counterclaims, and affirmative defenses which Plaintiffs or Defendants

have, could have or should have accorded therein, are hereby dismissed with prejudice.

4. Plaintiffs and Defendants have waived notice of the entry of this Final Consent Judgment and Permanent Injunction and the right to appeal therefrom or to test its validity.

5. The parties are to pay their own attorneys' fees.

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States District Court Judge

APPROVED AS TO FORM:

By: 

Joseph K. Dreitler, Trial Attorney (0012441)

Mary R. True (0046880)

DREITLER TRUE, LLC

19 E. Kossuth St.

Columbus, OH 43206

(614) 449-6640

[jdreitler@ustrademarklawyer.com](mailto:jdreitler@ustrademarklawyer.com)

[mtrue@ustrademarklawyer.com](mailto:mtrue@ustrademarklawyer.com)

Attorneys for Plaintiffs

By: 

Cody Bryant, a/k/a Coety Bryant

On behalf of himself and Defendant ELM

# Exhibit A

**Tim Meyer**

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**From:** Inquiry <info@kevinkurgis.com>  
**Sent:** Thursday, May 11, 2017 1:20 PM  
**To:** kevinkurgisstaff@gmail.com  
**Subject:** Law Offices of Kevin Kurgis Contact Form

From: frederic portman <[fportman@ageeclymer.com](mailto:fportman@ageeclymer.com)>  
Subject: [your-subject]

Name: frederic portman

Phone: 614-221-3318

Best time to call: 9-5

Email: [fportman@ageeclymer.com](mailto:fportman@ageeclymer.com)

Were you injured? No

Were you cited by the police? No

Tell us your area of need: Serious/Catastrophic Accidents

Briefly describe your situation:

i am an attorney who was hired by a client. When the accident first occurred he looked up your firm's name on the internet and somehow got connected to a lawyer in Cleveland who signed the client up via mail. The client became disenchanted and looked for a new attorney. He was very confused as he thought he hired your firm but somehow was working with a Cleveland attorney named Andrew Yespin. I know about the lawsuit your firm has filed against a Texas Company who has hijacked your website and stolen clients. Unfortunately this lawyer is not backing off even though my client has fired him. I am now wondering if this lawyer was referred the case by the Company you sued. If so it may be evidence you can use.. Let me know if I can help. Frederic A. Portman (614)221-3318.

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This mail is sent via contact form on Law Offices of Kevin Kurgis

# Exhibit B

# PRIME LEGAL LEADS

## BULK MARKETING AND FULL SERVICE PLATFORM

### GENERAL TERMS OF SERVICE

This agreement is entered into as of January 14 2017 ("the effective date"), between you, Alliant Law ("you" or "your") and Prime Legal Leads and its affiliates (collectively "Prime Legal Leads") for the services ("services") described below.

#### Details of Services Provided by Prime Legal Leads

Beginning on the effective date, Prime Legal Leads will deliver you leads, for the following territory and marketing fees listed below.

Our services include, prompt lead delivery and call center/intake services at no additional cost.

Network	Personal Injury
Territory	Ohio
Per Lead Cost	\$400 MVA
Additional Services	24/7 Intake Services & Esign Services

Prime Legal Leads guarantees a conversion rate of 50% during \$5,000 Test Budget & 3 free leads.

Payment Authorization: By completing the payment authorization section below, you are authorizing Prime Legal Leads to charge your card automatically for all fees described above and a 3.5% credit card processing fee.

Name on Card:	OC Enterprises
Billing Address:	[REDACTED]
Card Type (Visa/MC/Etc.):	[REDACTED]
Credit Card Number:	[REDACTED]
Security Code on Back:	[REDACTED]
Expiration Date:	[REDACTED]

Terms and Cancellation: The initial term of this agreement is for 30 days ("initial term") and will continuously renew every 30 days. Within the initial 30-day term, you may terminate the agreement with a 5-day written notice. After the initial 30-day term, the agreement shall renew every 30 days thereafter, unless either party provides a 30-day written notice. You will be responsible for all fees and dues accrued during the used period.

*Steven Pearlroth*

Prime Legal Lead signature

Licensee signature

Steven Pearlroth

Prime Legal Lead printed name

Licensee printed name

Bar ID Number



# Exhibit C

# PRIME LEGAL LEADS

## BULK MARKETING AND FULL SERVICE PLATFORM

### GENERAL TERMS OF SERVICE

This agreement is entered into as of July \_\_, 2016 ("the effective date"), between you, Attkisson Law Firm, LLC ("you" or "your") and Prime Legal Leads and its affiliates (collectively "Prime Legal Leads") for the services ("services") described below.

#### Details of Services Provided by Prime Legal Leads

Beginning on the effective date, Prime Legal Leads will deliver you leads, for the following territory and marketing fees listed below.

Our services include, prompt lead delivery and call center/intake services at no additional cost.

Network	Personal Injury
Territory	Ohio
Per Lead Cost	\$400 MVA, Premise Liability, Workers Compensation
Additional Services	24/7 Intake Services & Esign Services

Prime Legal Leads guarantees a conversion rate of 35-40%.

Payment Authorization: By completing the payment authorization section below, you are authorizing Prime Legal Leads to charge your card automatically for all fees described above and a 3.5% credit card processing fee.

Name on Card: \_\_\_\_\_

Billing Address: \_\_\_\_\_

Card Type (Visa/MC/Etc.): \_\_\_\_\_

Credit Card Number: \_\_\_\_\_

Security Code on Back: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

Terms and Cancellation: The initial term of this agreement is for 30 days ("initial term") and will continuously renew every 30 days. Within the initial 30-day term, you may terminate the agreement with a 5-day written notice. After the initial 30-day term, the agreement shall renew every 30 days thereafter, unless either party provides a 30-day written notice. You will be responsible for all fees and dues accrued during the used period.

\_\_\_\_\_  
Prime Legal Lead signature

\_\_\_\_\_  
Licensee signature

\_\_\_\_\_  
Prime Legal Lead printed name

\_\_\_\_\_  
Licensee printed name

\_\_\_\_\_  
Bar ID Number

# Exhibit D

ELM00001034